IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 31-1-2007

Coram

The Honourable Mr.Justice P.SATHASIVAM
and
The Honourable Mr.Justice N.PAUL VASANTHAKUMAR

W.A.No.1576 of 2004 and W.P.No.32776 of 2003

Sree Jayasubha Spinners P Ltd,
rep. By its Managing Diector,
B.Jayalakshmi ... Appellant in WA.No.1576/2004
Petitioner in WP.No.32776/2003

Vs.

1. The Commissioner and Secretary
to Government of Tamil Nadu,
Industries Department, Fort St.George,
Chennai - 600 009.

2. The Industries Commissioner &
Director of Industries & Commerce,
Chepauk, Chennai - 600 005.

3. The General Manager,
District Industries Centre,
Virudhunagar District. Respondents 1 to 3 in both
W.A.1576/2004 & W.P.32776/2003

W.A.No.1576 of 2004 is filed under Clause 15 of Letters Patent against the order of this court made in W.P.No.11482 of 2003 dated 15.3.2004. Filed under Article 226 of Constitution of India to issue a writ of Mandamus directing the 3rd Respondent to release the subsidy amount as claimed by the petitioner for the period from October 1998 to October 2001.

W.P.No.32776 of 2003 is filed for issuance of a writ of certiorari to call for the records of the 3rd respondent in his proceedings No.6971/A7/2001-II, dated 15.10.2003 and quash the same.

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For Appellant in W.A.1576/2004 & Petitioner in W.P.32776/2003 : Mr.V.N.Mohanraj

For Respondents in both WA.1576/2004 & WP 32776/2003 : Mr.K.Elango, Spl. Govt. Pleader

COMMON JUDGMENT

N. PAUL VASANTHAKUMAR, J.

W.A.No.1576 of 2004 is filed against the order of the learned single Judge dated 15.3.2004 dismissing W.P.No.11482 of 2003 on the ground that the petitioner has already filed W.P.No.32776 of 2003.

2. W.P.No.32776 of 2003 is filed with a prayer to issue a writ of certiorari to call for the records of the 3rd respondent in his proceedings No.6971/A7/2001-II, dated 15.10.2003 and quash the same.

3. If we dispose of W.P.No.32776 of 2003 no further order need be passed in W.A.No.1576 of 2004 and therefore we are dealing with W.P.No.32776 of 2003 on merits.

4. The brief facts necessary for disposal of the writ petition is as follows.

(a) Petitioner is a registered Small Scale Industrial Unit, which is a Spinning Mill. The Government of Tamil Nadu in order to promote the Small Scale Industries, extended various subsidies and incentive schemes to the Industrial Units. The third respondent granted SSI certificate to the petitioner as it is a Small Scale Industry, manufacturing spinning cotton yarn. The third respondent also issued subsidy on low tension (LT) power tariff.

(b) On 20.10.1998, petitioner Unit commenced production with three low tension service connections - one exclusively for Blow Room Machine, one for Preparatory Section and the third one for spinning purpose. The service connection numbers are 274, 275 and 276 and the same were provided on 8.9.1998 and 9.9.1998 respectively, with different horse powers. As per the averments in the affidavit, from 20.10.1998 to 19.10.1999 40% subsidy; from 20.10.1999 to 19.10.2000 30% subsidy; and from 20.10.2000 to 19.10.2001 20% subsidy are eligible in respect of the said service connections.

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(c) On 30.7.1999, the third respondent issued a letter to the petitioner Spinning Mill stating that the claim of subsidy should be preferred in Form-C within the stipulated period i.e, the first claim is to be preferred within the month of electricity connection and the subsequent claim from the month of January to June should be preferred on or before 31st August of the respective year and for the period from the month of July to December, claim should be made on or before 28th February of the next succeeding year.

(d) On 11.8.1999, Petitioner submitted six claims in respect of the three service connections, totalling an amount of Rs.29,37,458.60. On 24.1.2001, the third respondent issued a letter calculating the subsidy for the period from 20.10.1998 to 29.6.1999 to a tune of Rs.4,97,700/- and stated that a sum of Rs.2,39,850/- would be released and the rest will be released during the next allotment. On 30.3.2001, the third respondent issued a cheque for Rs.2,39,370/- after deducting the bank charges of Rs.480/-. Again on 20.12.2001, a sum of Rs.14,190/- was disbursed to the petitioner.

(e) The policy of the Government to give subsidy was issued in G.O.Ms.No.809 Industries Department, dated 2.12.1997 and the guidelines were issued for implementation of the subsidy scheme for power supply. The third respondent conducted inspection of the petitioner Spinning Mill and accepted the claims submitted by the petitioner for power subsidy and released part of the subsidy as stated supra and no further amount was released towards power subsidy. According to the petitioner Spinning Mill it submitted six claims for subsidy and even though the Government released the amount towards payment of subsidy to other Small Scale Industrial Units at Virudhunagar District, the third respondent withheld substantial amount of subsidy to the petitioner Unit.

(f) Petitioner submitted representations on 29.7.2002, 27.1.2003 and 7.3.2003 and prayed for releasing the subsidy. No action having been taken, petitioner filed W.P.No.11482 of 2003 and prayed for issuing a writ of mandamus directing the second respondent to release the subsidy amount as claimed by the petitioner from October, 1998 to October, 2001, a sum of Rs.26,91,608/-. The said writ petition was admitted and during pendency of the writ petition, the impugned order dated 15.10.2003 was passed, in and by which the petitioner was directed to refund the amount already received on the ground that the petitioner Unit has exceeded the maximum ceiling limit of 150 HP and hence the Unit is not entitled for subsidy as per the Government Order.

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(g) The said order dated 15.10.2003 is challenged in W.P.No.32776 of 2003 on the ground that at the time when subsidy was issued, respondents have not stipulated any condition and based on the assurance given, petitioner Mill started its Unit in the backward area and based on the alleged audit objection the impugned order has been passed without giving opportunity to the petitioner.

(h) The grounds of attack of the impugned order are that the load of three service connections of the petitioner Mill never exceeded 150 HP each and the action of the respondents in clubbing all the three service connections and stating that the petitioner Mill exceeded the limit of 150 HP is illegal and that while giving service connection, TNEB never imposed any restriction for availing the benefit and at this stage respondents are not entitled to impose such restrictions and withhold the amount payable to the petitioner. It is further stated that no notice was given to the petitioner before passing the impugned order and hence the principles of natural justice is violated. Since the impugned order was passed during the pendency of W.P.No.11482 of 2003 the said writ petition was dismissed as infructuous.

3. The respondents have filed counter affidvit stating that based on the audit objection only the impugned order was passed and subsequently, though the Accountant General dropped the audit objection through letter dated 5.2.2004, as per second respondent circular dated 7.6.2002 petitioner Unit is ineligible for the low tension power tariff subsidy and therefore the amount of subsidy disclosed in respect of the above service connections of the petitioner is to be recovered. From the counter affidavit it is clear that the original reason stated in the impugned order that due to the audit objection, second respondent passed order, which is no longer in existence as the Accountant General dropped the audit objection through his letter dated 5.2.2004.

4. The learned counsel for the petitioner reiterating the grounds raised in the writ petition argued that the audit objection having been dropped, the second respondent has no jurisdiction to issue the impugned order and the circular dated 11.6.2002 cannot be made applicable to the petitioner as it has no retrospective effect.

5. The learned counsel for the respondents based on the averments contained in the counter affidavit and in view of the circular issued by the second respondent on 11.6.2002 submitted that the petitioner is not entitled to get subsidy and the amount already admitted and paid is liable to be recovered from the petitioner.

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6. We have considered the rival submissions made by the learned counsel for the petitioner as well as the learned counsel for the respondents in the light of the circular dated 11.6.2002, issued by the second respondent.

7. By issuing G.O.Ms.No.809 dated 2.12.1987 the first respondent announced the subsidy scheme. Nowhere in the said Government Order it is stated that if a person is having more than one service connection, all the consumption charges should be clubbed together and see whether it exceeds 150 HP. The guidelines issued for implementation of the said scheme on 14.1.1988 also nowhere states the said reason for withholding or denying subsidy.

8. The contention raised in the counter affidavit is that only because of the circular issued by the second respondent dated 11.6.2002, petitioner is not entitled to get subsidy and is bound to refund the subsidy amount already received. The circular of the second respondent reads as follows,

"Rc.No.41390/KA4/2001

Office of the Industries
Commissioner and Director
of Industries and Commerce,
Chepauk, Chennai - 5.

Dated : 11.06.2002

C I R C U L A R

Sub: LTPT subsidy - Issue of EC
and sanction of LTPT subsidy
to SSI Units which are having
more than one LT Power
Connection - Regarding.

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Some of the General Managers, District Industries Centres have represented to this office, to clarify regarding issue of EC and sanction of power tariff subsidy in respect of SSI units, which have obtained more than one LT power connection. In this connection, it is stated that since Government have withdrawn Power Tariff Subsidy to H.T. Consuming units, some of the SSI units are obtaining more than one L.T. Power Connection in the same factory location, so as to avail the L.T. Power Tariff

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Subsidy, instead of going for H.T. Power Connection. It is therefore instructed that the L.T. Power subsidy shall be given to only one first L.T. Power Connection obtained in respect of SSI units which have obtained more than one L.T. Power Connection in the same factory location as per Permanent SSI Registration Certificate.

Sd/-K.Skandan
INDUSTRIES COMMISSIONER AND
DIRECTOR OF INDUSTRIES AND
COMMERCE."

From the perusal of the above circular, it is seen that the second respondent was informed by the State Government that the power tariff subsidy for H.T. consuming unit are withdrawn and some of the SSI units are obtaining more L.T power connections in the same factory location so as to avail the L.T. Power Tariff Subsidy instead of going for H.T Power connection. On the basis of the same, second respondent instructed that L.T. Power subsidy shall be given only to one L.T. Power connection obtained in respect of SSI Units and not to the other L.T. Power connection in the same factory location.

9. As rightly contended by the learned counsel for the petitioner, the said circular is not having retrospective effect. Only instruction is issued through the circular dated 11.6.2002. The petitioner obtained L.T. Power supply long prior to the said circular and the period for subsidy is also over by 2001.

10. Since we have found that the circular dated 11.6.2002 relied on by the respondents to sustain the impugned order in the writ petition is not having any retrospective effect and the impugned order in the writ petition itself states that due to the audit objection the said order is passed and subsequently the said audit objection also having been dropped by the Accountant General on 5.2.2004 as per the statement made in the counter affidavit, we hold that there is no justification in denying the subsidy already sanctioned to the petitioner Mill.

11. No other point was raised by the learned counsel for the respondents to sustain the impugned order.

12. In view of our above finding, W.P.No.32776 of 2003 is allowed and the impugned order dated 15.10.2003 is set aside with a direction to the respondents to pay the balance subsidy amount to the petitioner Mill within a period of eight weeks from the date of receipt of copy of this order.

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13. In view of the disposal of W.P.No.32776 of 2003, the writ appeal filed against the order in W.P.No.11482 of 2003 has become infructuous and consequently W.A.No.1576 of 2004 is dismissed. No costs.

vr

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The Commissioner and Secretary to Govt. of Tamil Nadu,
   Industries Department, Fort St.George,
   Chennai - 600 009.

2. The Industries Commissioner &
   Director of Industries & Commerce,
   Chepauk, Chennai - 600 005.

3. The General Manager, District Industries Centre,
   Virudhunagar District.

+ 2 ccs to Mr. V. N. Mohanraj, Advocate SR No.5419

TS(CO)
SR/7.2.2007

Judgment in

W.A.No.1576/2004 &
W.P.No.32776/2003

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